IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.590 OF 2005

Sou. Nirmalabai Shripatrao Desai
and anr. .. Appellants

Versus

Smt.Gaurabai Piraji Kadam
since deceased through her LRs
Baburao Ramchandra (Maruti) Kadam
and ors. .. Respondents

Mr.P.D.Dalvi for appellants

CORAM : P.V.KAKADE, J.

DATE : 10TH AUGUST, 2005.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by Addl. District Judge, Kolhapur dated 19.7.2004 dismissing the appeal and confirming the judgment and order passed by Civil

Judge, Junior Division, Kolhapur dated 13.9.1996 partly decreeing the suit and allowing the refund of the earnest money but rejecting the claim of specific performance of contract dated 7.5.1977.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit for specific performance of the suit agreement dated 7.5.1977 whereby the defendants agreed to sell the area of 50 x 100 sq.ft. out of plot of 1405 sq. mtr. from Survey No.1353 and 209 at the rate of Rs.2/= per sq.ft. The plaintiff submitted that the defendant no.1 did not execute the sale deed and hence the suit for specific performance came to be filed. The defendants resisted the suit on various grounds, inter alia, submitting that the plaintiff was not entitled for specific performance on various grounds and sought dismissal of the suit.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that though the execution of the suit agreement was proved, and the fact that the amount of Rs.1000/= was paid towards earnest

money however the plea for the specific performance was rejected. The appeal was carried to the District Court, Kolhapur. The learned Addl. District Judge concurred with the findings recorded by the trial court and dismissed the appeal. Hence the present appeal.

4. At the outset it must be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant brought to my notice certain observations made by both the courts below and also provided a copy of the suit agreement for perusal, therefrom it is quite clear that the exact suit property cannot be identified and determined, so as to enforce the suit agreement and therefore, in my considered view, both the courts below have rightly taken view that the specific performance of such defective contract could not be granted and hence the decree in that regard could not be passed.

5. I do not see any reason why concurrent findings recorded by both the courts below based on factual aspect should be disturbed, hence the appeal stands dismissed.